

89-982

Supreme Court U.S.
Superior Court U.S.
AUG 28 1989
JOSEPH F. SPANIOL, JR.
JOSEPH F. SPANIOL, JR.
CLERK

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

EDWARD P. SINDAK, Petitioner

v.

STATE OF IDAHO, Respondent

ON PETITION FROM THE SUPREME COURT OF IDAHO

APPENDIX B TO
PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

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109 pp

IN THE DISTRICT COURT OF THE FOURTH
JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ADA

THE STATE OF IDAHO,)
Plaintiff/)
Respondent,)
-vs-) Case No. 13652
) (55C-3018)
EDWARD P. SINDAK,)
Defendant/)
Appellant.)

PARTIAL TRANSCRIPT OF JURY TRIAL

BOISE, IDAHO

APRIL 24, 1986

CHARGE:

Enticing of Children, Misdemeanor.

APPEARANCES:

MARILYN SCANLAN, Boise City Prosecutor,
150 North Capitol Boulevard, Boise, Idaho,
appearing for and on behalf of the Plaintiff.

STEPHEN L. BEER, Esq., 302 W. Idaho
Street, Boise, Idaho, appearing for and on
behalf of the Plaintiff.

THE COURT: Please be seated. The date is April 24, 1986. It is now 10:40 in the morning. Calling for a trial to a jury, State vs. Edward P. Sindak. Are you Edward P. Sindak?

DEFENDANT SINDAK: Yes, I am.

THE COURT: The Defendant is present with his Attorney, Mr. Beer. The State's Attorney is here and I am informed by the Clerk of the Court that a Jury Panel is present and accounted for and awaits our call, and I have handed to the parties the proposed Pre-Voir Dire Instructions. Does the State have anything for me at this point?

MISS SCANLAN: Yes, Your Honor. The State would at this time make a final Amended Complaint.

THE COURT: May I see it, please?

MISS SCANLAN: if I might approach?

THE COURT: Have you been given a copy of this Amended Complaint, Mr. Beer?

MR. BEER: Your Honor, I have.

THE COURT: Have you read it?

MR. BEER: Yes.

THE COURT: All right. I've been handed an executed Amended Criminal Complaint in this case and in looking at the original Complaint in this action, which was filed September 13, 1985, it appears to charge the same offense and same code number, the dates the date, location is the same . . . the State now only alleges one child, in the original it was two, and there's a different description of where the child was located at the time of the alleged conduct. Well, does the City wish to speak to the Amended Complaint?

MISS SCANLAN: No, Your Honor. I think that it's proper to amend at this point.

THE COURT: Mr. Beer, go ahead, what do you want to say in response, if anything?

MR. BEER: Your Honor, I would object to the late amendment of Complaint. Secondly, I don't think it charges the crime.

THE COURT: Why do you think that?-

MR. BEER: Your Honor, the statute is very specific that it has to be an enticement from the house; this is a trailer.

THE COURT: I would have to say, Mr. Beer, that if that trailer is within the curtilage of the home, I would consider that to be the home. Although I haven't heard the evidence yet I have read your motion to limit evidence and if I understand what you believe the facts to be, apparently what the State is claiming is that this child or children were sleeping in a camp trailer on the property of the home. If those are the facts I think that in terms of that statute and what I discern to be the purpose behind that I would construe that to include that factual circumstance.

MR. BEER: Your Honor, I do have a motion to dismiss which I'll present at the end of the State's case.

THE COURT: Now, this other thing -- so on that basis I would overrule your objection on that grounds. What was the other one?

MR. BEER: That simply that it's a late
filing we object to

THE COURT: Okay.

MR. BEER: the amendment of
Complaint.

THE COURT: I do not automatically say,
"no" to that objection. The reason I'm going
to overrule your objection is that the
allegations made in the Amended Complaint fit
the recited proposed facts in your motion to
limit the evidence precisely so I don't think I
can find that the changes in the alleged facts
have caught you by surprise. You apparently
have known the State's position as far as the
facts are concerned for quite some time; such
that you could have filed that earlier motion.
Are you claiming surprise?

MR. BEER: No, Your Honor.

THE COURT: Or any kind of unfair
advantage or other prejudice?

MR. BEER: No, I think the Amended
Complaint basically states what happened and
whether it states a charge is

THE COURT: Yes.

MR. BEER: up to the Court.

THE COURT: Okay. Have I addressed all
the elements of your objection?

MR. BEER: Yes, Your Honor. There will be
one more objection to the Amended Complaint in
that there isn't an intent. In other words,
the Complaint and the statute just say, "That
if you entice a child away from its house or
school." and, the difficulty I see with that
is that there is no intent, like in lieu

* * * *

THE COURT: Right.

MR. BEER: and say this is intent
to do something bad.

THE COURT: That's right. There's -- I
don't -- I agree with that. I don't see it in
the statute. It seems to be a prohibited act,
just like speeding; can't do it even if
innocently done. I don't know that that's
grounds to dismiss though. I think the
Legislature has defined an act -- it's I think
it's a reasonable person can discern from the

fact of it what is prohibited and it seems to serve a legitimate and proper public concern under the police power. I'm inclined to let it stand. So that motion -- or that objection is overruled also. All right. Then the Amended Complaint and I'll label it "Amended" is entered of record at this time. Have you been given a copy?

MR. BEER: Yes, Your Honor, I have.

THE COURT: All right. Now, is there anything further from the State?

MISS SCANLAN: No, Your Honor.

THE COURT: I won't ask for any objections to the Pre-Voir Dire Instructions because I'm going to have my Clerk redo the charging instructions -- or the proposed instructions for a moment, do you have anything you want to raise with me as a preliminary matter that's appropriate?

MR. BEER: Your Honor, the only thing would be a motion to exclude witnesses even during Voir Dire.

THE COURT: Well, so ordered. Well, does the State object to that?

MISS SCANLAN: Your Honor, the State would be asking to allow at least one of the child's parents to be present in the courtroom while he testifies. I think the rules

THE COURT: Yes, I'm aware of the

MISS SCANLAN:allows for that.

THE COURT:rule on a friendly face for children. How old's the child witness?

MISS SCANLAN: He just turned ten.

THE COURT: All right. Will there be more than one child witness?

MISS SCANLAN: No, there will just be one.

THE COURT: Do you have any problem--or basis to challenge that, Mr. Beer?

MR. BEER: Your Honor, if--no, the only thing I'd request is if the parent is going to accompany the child into the courtroom I would ask that testimony occur first. I don't know if there would be any repetition based upon what one witness says and following up with that, but if the parent has testified and is not going to testify further I have no problem with a friendly face.

THE COURT: So you would like--you're asking then that the Order be that the--who testifies first between the parent and the child?

MR. BEER: Well, all I'm saying is--I guess the parent would have to testify first and that the parent would not testify again and then the child could come in and testify.....

THE COURT: Oh, I see.

MR. BEER: and the parent could be there.

THE COURT: I see. What's the City think of that?

MISS SCANLAN: I don't mind--I don't mind putting one of the parents on first and then having the child and then letting that parent stay.....

THE COURT: Okay.

MISS SCANLAN:but I would like to reserve the right to recall that parent if I think it's necessary on rebuttal.

THE COURT: Yes, that's almost a necessity.

MR. BEER: Well, then I'd object to having
a parent present because I

THE COURT: Are you going to put both

parents on?

MISS SCANLAN: Yes.

THE COURT: Are there any other persons
under the rule that are available to you today
that could serve as a friend that would be
satisfactory?

MISS SCANLAN: The only other person that
we have here is a younger brother.

THE COURT: Yes. Well, I guess we've got
a collision of two rules here and I believe I
understand the purposes that both rules serve.
We certainly don't want witnesses instructing
each other on the testimony and yet there's a
clear public purpose--a legitimate public
purpose behind a child having a friendly face
in the courtroom and on balance comparing the
two I find that the interest of the child
prevails, and therefore the State will be
allowed to have a parent in the courtroom. I
would ask that parent testify first and then

parent after being in the courtroom when the child testifies I will allow that parent to be available as a rebuttal witness. Anything else, Mr. Beer.

MR. BEER: No, Your Honor. Well, yes, there is one thing and I think this is just for the record. I had a motion in limine which I think is moved (sic) at this point from what the Prosecuting Attorney has indicated to me, so

THE COURT: Is that right?

MISS SCANLAN: I will not be using those witnesses in my case and (sic) chief.

THE COURT: Okay. Will you be trying to solicit the objection that evidence though from other witnesses that Mr. Beer's concerned about?

MISS SCANLAN: I don't understand.....

THE COURT: Well, Mr. Beer's concerned about an event he claims took place two or three years earlier and you're saying you won't call those witnesses. I'm not so sure Mr. Beer's is concerned about any witnesses, he's

concerned about the evidence itself. Are you
not going to attempt to produce that two or
three year old evidence no matter where you
would get it?

MISS SCANLAN: In my case and (sic) chief?

THE COURT: Well, in your case and (sic)
chief.

MISS SCANLAN: I wouldn't--I will not be
using that evidence in my case and (sic) chief.
I don't know, you know that the Defense....

THE COURT: I understand that.

MISS SCANLAN:will be.

THE COURT: You can't be held on that yet,
but in your case and (sic) chief you're not
.....

MISS SCANLAN: No.....

THE COURT:going to go into the
things.....

MISS SCANLAN:absolutely not in my
case and (sic) chief.

THE COURT:addressed in his motion
in limine.

MISS SCANLAN: Pardon me?

THE COURT: You will not be going into
your--their material.....

MISS SCANLAN: No.

THE COURT:he objected to in that
motion?

MISS SCANLAN: That's right.

THE COURT: All right, okay. Does that
satisfy you, Mr. Beer?

MR. BEER: That's fine.

THE COURT: Did you have any other
preliminary matters?

MR. BEER: No, Your Honor.

THE COURT: I thought you said you had a
motion to dismiss?

MR. BEER: Your Honor, I do, but only
after the State's case.

THE COURT: Oh, all right. Well then the
only remaining matter then is the--to settle on
the proposed Pre-Voir Dire Instructions and I'm
taking a recess now my Clerk will prepare a new
instruction consistent with the Amended
Complaint and I'll have her bring that out to
you and give it to you as a substitute

instruction for the one you already have. It shouldn't take long. Court is in recess.

MR. BEER: Thank you, Judge.

(Court off record)

(Court on record)

THE COURT: All right. I've had my Clerk hand to you now the charging instructions for the Amended Complaint. Has the State received your copy of the proposed Pre-Voir Dire Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to them?

MISS SCANLAN: No, Your Honor.

THE COURT: Has the Defense received your copy of the proposed Pre-Voir Dire Instructions?

MR. BEER: Yes, Your Honor, and I do have an objection to Amended Instruction #2 and I think we've already.....

THE COURT: To the Amended Complaint?

MR. BEER: That's basically it.

THE COURT: Yes. Is your objection based upon the fact that the Complaint's been amended?

MR. BEER: The Complaint's been amended and I don't think it states a charge but I think we've already argued and you've already ruled on it.

THE COURT: Yes. Okay. That would be the same ruling then. All right. Anything else for me to decide before we begin the Jury selection?

MR. BEER: I don't believe so.

MISS SCANLAN: I don't think so.

THE COURT: Okay. The Clerk of the Court will please bring in the Jury Panel. Have you received your sheets?

MISS SCANLAN: Yes, Your Honor.

MR. BEER: Yes, Your Honor.

THE COURT: Would it be better if I read the Pre-Voir Dire Instructions. Let's see. Yeah, I'll be doing them before you start questioning, okay.

MISS SCANLAN: Judge, do you want us to question every--all of the perspective (sic) Jurors as a group first.....

THE COURT: Yes, and.....

MISS SCANLAN:and then come back and.....

THE COURT:then we'll go to individuals.

MADAM CLERK: All rise.

(Pause)

THE COURT: Thank you. You may be seated. The Jury Panel is now present. Members of the Jury Panel, the Clerk of the Court will now call your names, please answer when your name is called so we can record your presence and give you credit for service today.

(Roll call of Jury)

(Jurors Sworn)

(Jury Instructions)

(Voir Dire recorded, but not transcribed)

(Court off record to change tape)

(Court on record)

(Voir Dire recorded, but not transcribed)

(Jury Panel Selected and Passed)

(Jury Instructions)

THE COURT: Has the State read the proposed Pre-Trial Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to them?

MISS SCANLAN: No, Your Honor.

THE COURT: Has the Defense read them?

MR. BEER: Yes, Your Honor.

THE COURT: Any objections.

MR. BEER: Yes. We object to Instruction #6 on the same grounds as we talked about this morning, and, in addition on the ground of state.....

THE COURT: Okay. Now Instruction #6, the first grounds is you believe it does not define that--a crime?

MR. BEER: That is correct.

THE COURT: Okay. That objection is overruled, unless you want to address it further.

MR. BEER: No, Your Honor, what....

THE COURT: Okay. Same ruling then.

MR. BEER: Okay. I'd refer the Court's attention to State vs. Lopez, which is 98 Idaho 581, that the statute in that particular case did not provide fair notice or warning of what was a criminal act and I think the same applies to Instruction #6.

THE COURT: Any further objection to #6?

MR. BEER: No.

THE COURT: Okay. Any other objections to the Pre-Trial Instructions?

MR. BEER: Yes. Instruction #7, Your Honor, the second sentence it says, "Joint opiation", I think that should be, "Joint operation". I don't want the Jury to become confused that.....

THE COURT: Oh my gosh, you're right.

MR. BEER:we're using (indiscernible) is fine. I.....

THE COURT: All right. So corrected.

MR. BEER: And also I think that this particular statute would require a specific intent so I would object to that portion of

Instruction #7 where it says, "To constitute criminal intent, but is not necessary that

- there should exist an intent to violate the law
- in the next proceedings sentence."

THE COURT: And you believe that the statute charged here requires a specific intent?

MR. BEER: I think--actually, I don't think the statute, as I've mentioned, has any intent element in it but I'm sure--my position is that it has to have a specific intent element, so I'm objecting to.....

THE COURT: What kind of specific intent?

MR. BEER: The specific intent to break the law. I don't think it's like speeding or a DUI. I think it would have have to be with the intent to arouse the

THE COURT: Yes.

MR. BEER:lust or whatever it may be.

THE COURT: All right. I understand what you're saying. Does that State wish to respond to that objection?

MISS SCANLAN: I don't think

(indiscernible) specific intent.

• (Indiscernible) if its' clear like this the
• action is intended to (indiscernible).

THE COURT: Objection overruled. Any
other objections to the Pre-Trial Instructions?

MR. BEER: No, Your Honor.

THE COURT: Okay. Does the State wish to
raise anything with me now before I call the
Jury in?

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: No, Your Honor.

THE COURT: Okay. Here is the order of
procedure then. I will call the Jury back, I
will give them the Pre-Trial Instructions,
opening statements and the presentation of the
evidence. All right. Will the clerk please
return the Jury.

MR. BEER: Your Honor?

THE COURT: Yes.

MR. BEER: I'm going to be heard on weight
but reserving my opening statement, if that's

.....

THE COURT: Thank you.

MR. BEER: Thank you.

THE COURT: I'll simply ask you that in
front of the Jury.

MADAM CLERK: All rise.

THE COURT: Thank you. Please be seated.

The Jury is present and accounted for. The
parties continue to be present before the
Court. Members of the Jury I now give to you a
set of instructions called the "Pre-Trial
Instructions". These instructions are given
just before the opening statements and the
evidence is presented. There are Instructions
5 through #8.

(Pre-Trial Instructions recorded, but not
transcribed.)

THE COURT: That completes my second set
of instructions to you. Before the evidence is
presented the Attorneys will have an
opportunity to present to you a brief

statement. This statement is to give you some orientation and guidance in what the Lawyers think the evidence is going to show in this case. These are called "Opening Statements", and they are to assist you to better understand the evidence as it unfolds from the witnesses or other evidence. The State's Attorney can present her opening statement now and then the Defendant's Lawyer can give his now or save his and give it later in our proceedings. Go right ahead.

MISS SCANLAN: Thank You, Your Honor.

Members of the Jury, the case that you're going to hear today is one involving an incident that took place on August 18th of 1985. Carol and Richard Bradshaw will be here to tell you that they were at home with their three children; Danny, Matt (phonetic) and Jeremiah and Jeremiah had a friend sleeping over and his name is Craig Hines (phonetic). Jeremiah and Craig were sleeping in the family trailer which is parked just outside of the home in the back yard. They have a cement area, a cement slab

where they have a--where they keep their trailer and they have a camper that sits there and another smaller utility trailer. And, Jeremiah and Craig were out in the camp--in the trailer and they received a phone call late that evening from the Defendant, Mr. Sindak, wanting one of the boys to come over and be paid for some yard work that he's done for him. The Defendant, Mr. Sindak, lives directly behind the Bradshaw's. Mr. Bradshaw explained to Mr. Sindak the children were asleep, in fact, one of the children was ill, and he wasn't going to let anybody go over to his house. A short time later, approximately 11:30--sometime between 11:30 and midnight Mr. and Mrs. Bradshaw could hear a voice outside their window. They'll tell you that their bedroom window is eight to ten feet from this trailer that's parked on the cement slab in the back yard. They heard voices, they were at the window listening trying to hear what was being said and Jeremiah Bradshaw will tell you he was in the trailer and then he heard somebody

knocking at the door calling his brother Matt's (phonetic) name. He told him that Matt (phonetic) wasn't there and he wanted to know who it was, and Jeremiah looked out the window and he saw the Defendant, Mr. Sindak, there. There was some conversation and the Defendant asked if he could come in, asked if they would come over to his house and watch television and they said, "No". The Defendant kept saying, "Be quiet, don't wake your parents," and then asked, "Why didn't they come out and go over and watch TV." About that point, as the Defendant was coming around one side of the trailer Mrs. Bradshaw who was furious at that point came storming around the side of the house, and they have a low fence that divides this flat area from the rest of their yard. She came over this fence and was startled--they were startled to see each other and at that time the Defendant walked onto the sidewalk, which is not too far from where they were and said, "Good evening", and walked away. That's essentially the State's case. Officer Keith

Potter who was the Investigating Detective will be here to tell you that he talked to the victims in this case and discuss briefly with you that investigation. Thank you.

THE COURT: Mr. Beer, do you wish to address the Jury now or save your remarks until a later time?

MR. BEER: Your Honor, if I may reserve it, I'd appreciate it.

THE COURT: All right, thank you. The State will please call its first witness at this time.

MISS SCANLAN: Thank you, Your Honor. The State would call Richard Bradshaw.

THE COURT: Is that one of the witnesses in the back?

MISS SCANLAN: No, Your Honor.

MR. BEER: No, it isn't.

(ROBERT BRADSHAW, was sworn).

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Good afternoon. Would you state your name and spell your last name for the record

please?

A Richard Bradshaw, B-R-A-D-S-H-A-W.

Q Mr. Bradshaw, where do you reside?

A In Boise at Jullion, 3460 Jullion Street.

Q And that's in the City of Boise?

A Yes.

Q Mr. Bradshaw, has--were you living at that 3460 Julian Street address on August 18th of 1985?

A Yes.

Q You do recall being at home that night?

A Yes.

MISS SCANLAN: If I might approach the Clerk, Your Honor?

THE COURT: Yes, go ahead.

MISS SCANLAN: I would ask that this be marked as State's Exhibit No. 1.

(State's Exhibit 1, Marked).

MISS SCANLAN: (Inaudible).....

THE COURT: That's fine, thank you.

Q Mr. Bradshaw, I'm going to set this here (indicating) for just a moment. Do you

recall who was at home with you on that particular night?

A The entire family was home; my wife and my daughter, Matthew, and my twins, Jeremiah and Danny, and we also had a visitor.

Q And who was that?

A Craig Hines (phonetic), he was staying over with the twins.

Q How old are your children?

A The twins are ten and Matthew is fourteen and my daughter is seventeen.

Q The twins are--what are the twins' names?

A Daniel Bradshaw and Jeremiah.

Q On that particular night did you receive a phone call?

A Yes.

Q Can you describe to the Jury what took place?

A Okay. At approximately 10:30 I got a tel--the phone was ringing and I was in bed and I got out of bed and went to the other room and Ed Sindak was on the phone wanting to talk to

my oldest son, Matthew. Matthew had been helping him take care of his lawn and doing things and he wanted to give him some money.

• And I told him that Matt (phonetic) was asleep and he wanted to know how the rest of the family was and I said okay, except Danny was real sick. I said that he was pretty disappointed because him(sic) and Jeremiah had a friend over and they were going to sleep in the trailer and that Danny had started throwing up and he was in the house and he was real sick and he said, oh, that was too bad, you know, and he was--acted concerned over the boy. And, we talked for a second and I think that was about it.

Q Okay, was it a friendly conversation?

A Yes.

Q Okay, had you spoken with this person before?

~A Yeah, Ed and I had talked many times.

I'd been over to his house and we'd visited and we was getting along real good. He had called us, I don't know, four or five times; I'm

guessing, you know, three times, late in the evenings at 10:00 like this wanting to talk to Matt (phonetic) or wanting Matt (phonetic) to come over and it had kind of bothered me but not enough that I was going to say anything. I hadn't said anything to Ed about it. And, so it was a good friendly relationship that was.....

Q When you talk about Ed Sindak are you referring to the gentleman on my left?

A Yes.

MISS SCANLAN: If I might approach the witness, Your Honor.

THE COURT: Yes, go ahead.

Q Mr. Bradshaw, I'm going to direct your attention to a diagram here (indicating). Would you look at this (indicating) diagram and familiarize yourself with it?

A Yes.

Q Do you recognize that this (indicating) represents?

A Yes, this is--this here (indicating) is our house, this (indicating) is the front lawn,

this (indicating, is our back lawn, this (indicating) is a chain link fence. This (indicating) is a wooden fence about six feet tall, and this here (indicating) is where our trailer was sitting and there was a camper sitting in here (indicating), and this here (indicating) is our bedroom window where my wife and I slept about--whenever we allowed the kids to sleep in the trailer in the summertime we'd leave the back window wide open. It's about ten feet from the trailer, the window is, and we leave that wide open so we can keep them calm, make them be quiet and then also to just kind of watch them.

Q Okay. With this (indicating) marking pen could you note--maybe you can help me move this (indicating).

A Me?

Q You can write on (indiscernible).

A Okay.

Q Can you note for the Jury what this (indicating) green square represents? Let me

just draw an arrow underneath and tell them
what that (indicating) is?

A Okay. This (indicating) right here

(indicating)?

Q Uh-huh.

A It's the trailer.

Q Now, that's where Jeremiah was asleep,
is that right?

A Yes. This (indicating) is where him
(sic) and Craig Hines (phonetic) were sleeping.

Q Okay. Now, this (indicating) you
indicated was a six foot wooden fence, is that
right?

A Uh-huh.

Q That (indicating) red.....

A Yes.

Q Would you look at--now the dots
that....

A I may--.....

Qgo along the....

AI may be--I may be wrong on the six
feet, I'm guessing that.

Q Okay.

A It's--it's an.....

Q Okay. Approximate?

A I haven't measured it, no.

Q These (indicating) dots that run along the edge of your property, is that correct?

A Yes.

Q What is that (indicating).

A That is a rail fence; it's two feet tall. It stands about--about like so (indicating). It has two (indiscernible) on it that you can step over, it's just for looks; it's not to hold anything out.

Q Now, the area where this (indicating)--what you've marked as a trailer, would you describe that area for us?

A Well, this (indicating) is a cement slab back here (indicating) for parking cars, utility vans; something like this here (indicating) and I had the trailer there (indicating) and a small camper and I had another little utility trailer here (indicating). There's double gates right here (indicating) in the middle of it which I leave

open for them when they're staying out so they can come in the back door or

Q Now, you indicated this (indicating) area between these (indicating) two green marks.....

A It's the window.

Q The bedroom window. And this isn't a drawing--it's not to scale is it?

A No, it's not to scale. It's just a (indiscernible)

Q Okay. Now, Mr. Bradshaw, did anything else happen that night that was out of the ordinary?

A We went to bed after talking to Ed for five, ten minutes, you know, approximately, and--and I was almost asleep. I was doosing--dozing off and my wife nudged me and said that something was bothering me--she could hear somebody outside talking. She thought to--to our son and Craig. And, she was very concerned over it so I went to the window and I listened for a little bit and I could tell by the voice I could tell it was Ed that was out there

visiting with the boys. I listened for a few minutes and I thought, "Well, he's just walking by." And I went back and laid down in my wife and my wife she got nervous and she got up and she went over there and listened for a little while and pretty soon she got upset. She said, "I want you to go out there." And I said, "Well, you know, he can walk by if he wants to." She said, "I don't think it's that." She said, "He's been out there too long". And so I got (indiscernible), by this time she went outside and I was sitting there listening and I was getting concerned because to me it sounded like Ed was--was holding his voice low like he was talking real low and--and I didn't--I didn't really know what to think of it. I was getting concerned but I didn't--I really didn't know what to think of it at that time.

Q Okay. Did you go outside?

A No I didn't.

Q What was the next thing that happened?

A Well, the next thing that happened is my--I--my wife went into the trailer and then I

started outside and as I was coming out I
was--met her. I can't remember just where it
was but I met her and the children coming back
in the house and I sat down with my boys; with
them, and they acted real scared. And this was
the first time that I started getting a little
upset because Jeremiah acted really really
scared and I couldn't understand why. And I
just--I said, "Well, you know, what was
happening?" My wife was very, very upset and
very mad. And then Jeremiah.....

Q Did you talk to the boy?

A Yes, then Jeremiah sat down and told me
what he--what had been going on out there, what
he--and that really bothered me and I couldn't
sleep very well the rest of the night.

Q Did you put the boys to bed at that
time?

A We put them to bed but they--they
didn't sleep well. They didn't go to sleep for
quite awhile. They were--that was the thing
that really upset me was then that I started
realizing that they were really scared and....

Q Had you allowed the children to sleep
in this trailer before this particular evening?

A Yes, we had. I don't know how many
times, but probably six times through the
summer.

Q And so Jeremiah had slept out there
before?

A Oh yeah.

Q And who was the other little boy that
was with him?

A Craig Hines (phonetic).

Q Okay. And does he live here
(indiscernible)?

A No, that--the reason they were staying
out there is he was moving that week to Denver
and they had been best buddies and so he had
been spending about three days with us and that
was their last night; he was leaving the next
morning I--if I believe--I believe it was and
so that was kind of--we was going to let them
stay out there because they wanted to and they
were thinking about--oh, they were talking
about staying up all night and--and they--at

that age they did a lot of talking, they never made it but.....

Q Okay. Are you--do you have legal

custody of your children?

A Yes.

Q And you're their custodial parent?

A Yes.

Q You are married to Carol Bradshaw?

A Yes, uh-huh.

Q And Jeremiah is your child?

A Yes.

Q And he resides with you?

A Yes.

Q Did you give permission to Mr. Sindak to talk to your children that night?

A No. He--he wanted to talk to them and I said--I told him, no, I didn't want to wake them up because they were asleep, and that.....

Q Did you ever give him permission to come onto your property to speak with the children?

A No I never had--I just treated it like neighbors. He talked to us, we talked to him

and I think Ed had walked by our house a few times. I--I borrowed things from him. We was taking care of his yard.

Q Uh-huh. On this particular night did you give Mr. Sindak permission to take the children to his home?

A No. I had told my boys that--a long time ago that they were not to go into anybody's home in the evenings. They were to stay at home.

Q Thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Cross-examine?

CROSS EXAMINATION

BY MR. BEER:

Q Isn't it true that Matt (phonetic) the next day went over to pick up his lawn mower and money?

A He went over the next--it might have been the next day, yes.

Q And isn't it true that he went over accompanied not by you or your wife?

A He went with another friend.

Q As I understand your testimony, you

found out what was happening--or what you
alleged to have happened the night of August
18th, or the early morning hours of August
19th, is that correct?

A The 18th, that evening at--by 12:00.
Between 11:30 and quarter to 12:00 is when this
took place.

Q Do you have a child who delivers papers
in the neighborhood?

A Yes we do.

Q And which child is that?

A We have all three of our boys working
in that route.

Q Since August 18, 1985 isn't it true
that the children have come over to collect
from Mr. Sindak for the paper?

A Only my daughter who is seventeen and
only Matthew who is fourteen, and we told
Matthew that if he went over there he had to
have a friend with him.

Q I'd like to talk to you about your drawing. Is Telfair a street?

A Yes, Telfair--Ustick runs up here (indicating) about a block-and-a-half away, Jullion here (indicating). Telfair runs along this (indicating) way and another street here (indicating) and then it deadends over here (indicating).

Q Now, on the night in question, wasn't the camper located where you have the trailer and then the house trailer next to the left on the picture this way, and then the utility trailer?

A I don't understand what you.....

Q Well, you had the trailer, and it appears to be on the far right-hand side? It'd be on, I guess, the west side?

A The west side, yes.

Q Okay. And it's your recollection that that was on the far west side and then as you go east you had the utility trailer and then a camper?

A No, we had the camper next to that (indicating) and then a utility trailer.

Q Is there--or had you ever had the trailers arranged so that the camper was on the far west and then you had the house trailer in the middle and the utility trailer on the east?

A We have the trailer now so it's up against--we have the trailer so it's up here (indicating) against this (indicating) wooden wall now.

Q All right. But going back to the night in question, you're positive of the location of the.....

A Yes.....

Qtrailers?

Abecause I took them out and moved them for the reason that a person could not--the way it was set up before a person could stand between the trailer and the camper--they could stand here (indicating) and it was almost impossible to see them.

Q What.....

A I switched this around, put a trailer over here (indicating) so that you could not stand on this side. If you were going to stand by this (indicating) trailer you'd have to stand on this (indicating) side where I could see you.

Q So that evening--or at least part of that evening you were concerned about the possibility of somebody coming up to the trailer, would that be fair to say?

A No. I was not concerned. I--I put my trailer there (indicating) just--there was no reason why I parked it there, I just did.

Q I thought earlier--I thought you just indicated that the reason for doing was that you wanted to have a clear vision.....

A That's right, afterwards.

Q Oh, this was afterwards.

A Afterwards.

Q Okay.

A Yes. I moved that trailer afterwards so that if anything like this ever happened again I would be able to see an individual.

Q Now, from the little fence that you talked about that was just a ornamental fence, didn't keep anything in or out, how--excuse me, how far is that fence to the street, Telfair?

A That little fence goes right up to the sidewalk.

Q Okay. Could you tell me how far you think it is?

A From the sidewalk to the street?

Q No, from the little fence to the sidewalk?

A Well, the posts touch the sidewalk because they go in the ground and that's anywhere--it depends on where it's at because the fence goes around and it curves. They're from anywhere from six inches from the edge of the sidewalk to on the back part here (indicating) I have one, you know, even where it's almost touching; it's about an inch from the sidewalk.

MR. BEER: Your Honor, may I approach the....

THE COURT: Yes.

Q I may be confusing you and I may be confusing myself, I'm not sure which, but if--is this (indicating) a fence right along here (indicating)?

A That's a chain link fence, yes.

Q Chain link, okay, I'm sorry. Okay. Then from the chain link fence to the sidewalk or to the street how far is that distance, would you estimate?

A Approximately twenty-five feet.

Q Okay. So we have a--distance of about twenty-five feet.....

A Uh-huh.

Qand that would be from the chain link fence at the north end of the property to the street?

A To the street, yes.

Q And the sidewalk is how wide?

A Approximately three feet.

Q Okay. So you have a three foot sidewalk, so we've got a distance of about twenty-two feet maybe from this (indicating) fence to the sidewalk?

A Approximately, yes.

Q Does the trailer overlap onto the sidewalk at all?

A The trailer doesn't, the tongue, if you want to call that part of it comes out over the--maybe over the sidewalk of maybe a foot, maybe.

Q So, in your drawing--and it looks as if the little ornamental fence that you have right around here (indicating) marks more or less the boundaries of the sidewalk? Is that correct?

A Yes, yes. That pretty fair, yes.

Q What is the size of your trailer?

A It's a --I believe it's twenty-two feet.

Q ...You indicated that Mr. Sindak had called that evening, have you told us everything that was said by you and by him during that conversation that you can recall?

A ...As much as I can recall, yes.

Q Did you relay the message to Matt (phonetic) that Mr. Sindak had called and that

he should go over and pick up his lawn mower
and money?

A No I hadn't because he was asleep.

Q Did you thereafter?

A That evening?

Q Not that evening but at anytime
thereafter?

A The next day I went over--or the next morning I told Matt (phonetic), I says, "If you want your money, you'd better go over and get it from Ed and I want you to go with someone else, because ..." I said, "... I don't know how to handle this situation, I'm going to have to confront Ed on it and I--I don't want you going over there anymore and I don't want you doing the law." And....

Q Okay. So you subsequently told him that Mr. Sindak had called and that his money was ready at Mr. Sindak's house?

A Yes.

Q And you have told the Jury everything that occurred during the conversation that you had with Mr. Sindak that evening?

A As much as I can remember, yes. I don't--I can't remember leaving anything out.

Q ...Now, was your wife furious when she walked out of the house that evening?

A Was she upset?

Q Upset, furious?

A Or mad?

Q Right.

A Yea, she was very upset about the fact that someone was out there talking.

Q And did your wife go out to confront the person that was talking to the boys?

A Yes.

MR. BEER: No further questions, thank you.

THE COURT: Redirect?

MISS SCANLAN: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Mr. Bradshaw, did you know who was out there?

A Yes, I did.

Q Did your wife?

A Yes. ...My wife could not see him and neither could I but I--Ed and I had talked many times; I knew his voice.

Q Thank you.

MISS SCANLAN: I have no further questions.

MR. BEER: No further questions, thank you.

THE COURT: Thank you. You may step down. Next witness?

MISS SCANLAN: The State would call Carol Bradshaw.

(CAROL BRADSHAW, was sworn).

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Would you state your name and spell your last name for the record, please?

A My name is Carol Bradshaw,
B-R-A-D-S-H-A-W.

Q And where do you live?

A I live at 3460 Jullion Street.

Q In the City of Boise?

A Uh-huh.

Q Are you married to Richard Bradshaw?

A Yes, I am.

Q Do you have any children?

A We have four.

Q What are their names and ages?

A Roxie (phonetic) is sixteen, Matthew is fourteen, and I have twins, Jeremiah and Daniel; they're ten.

Q Mrs. Bradshaw, were you at home on August 18, 1985?

A Yes, I was.

Q Was your whole family at home that night?

A Uh-huh.

Q Did anything unusual happen that night?

A Yeah.

Q Can you tell the Jury what happened?

A About 11:30 we were in bed and I heard somebody call Matthew's name outside our bedroom window, and I got up and went to the window and listened and I--the gentleman left the door of the trailer and went back on the other side.

Q Could you see somebody outside?

A No, I could hear. And I went back to bed and it bothered me and I couldn't--and I could still hear voices and so I got up and dressed and went outside.

Q And what did you find when you went outside?

A And when I got outside I found--I just--I was maybe ten feet from the door of the trailer and Mr. Sindak was coming around the end of the trailer.

Q Okay. Now, Mrs. Bradshaw, if I direct your attention to a diagram that's behind you.

MISS SCANLAN: If I might approach the witness, Your Honor.

THE COURT: Yes, go ahead.

Q Can you look at this (indicating) diagram and familiarize yourself with it?

A Uh-huh.

Q Do you recognize what this represents?

A Uh-huh.

Q And is this a diagram of essentially where your home is located?

A Yes it is.

Q Where is your bedroom?

A The bedroom is right here (indicating),

this (indicating) is our bedroom window.

Q Okay. And how did you leave the house when you went--this (indicating) is the trailer, is that correct?

A Yeah. I came out through my bedroom and went out the front entrance, right here (indicating) and around the grounds, back here (indicating).

Q Okay. And as you approached the trailer from this (indicating) direction where did you see the Defendant?

A He came around the back and was sneaking around the corner.

Q He came around this (indicating) way?

A Uh-huh.

Q Did you know who--when you first heard voices outside did you know who was out there?

A Did I know who?

Q Did you recognize the voice?

A I suspected, but I didn't know until I actually saw him.

Q Okay. What did you do when you went

out?

A I knocked on the door of--the door--I tried the door of the trailer and the boys had it locked and I told Jeremiah to let me inside.

Q When you saw the Defendant coming around the side of the trailer, did you speak to him?

A No, I didn't.

Q Did he speak to you?

A He said, "Oh, good evening."

Q And where did he go at that point?

A He headed back down the street on Telfair toward the west.

Q Okay. Toward Jullion?

A Yeah. And I never noticed where he went from there.

Q And what did you do at that point?

A I went inside and talked to the boys.

Q Were you upset?

A Yeah. I thought it was strange.

Q Were you able to hear any of the conversation between the Defendant and the children?

A No. I heard him when he called Matt's (phonetic) name when he was round--and he called Matt (phonetic) two or three times when he was around on the side that was closest to our window.

Q Did--what did you do with the children?

A Well, I tried to talk to them first and--to see, you know, what was going on and then I told them I thought they should go inside and sleep for the rest of the night.

Q And they did that?

A Yeah.

Q Are you the custodial parent of Jeremiah Bradshaw?

A Yes I am.

Q And....

A You're talking about the parent, the actual parent, yes.

Q And you have legal custody?

A Yes.

Q Did Mr. Sindak have permission to be with your children that particular night?

A No.

Q Did he have permission to take them to his house?

A No.

Q Or anywhere?

A No.

Q Are your children--on August 18th were your children allowed in his home?

A No. My children--my son delivers that paper--his paper to him and also collects from him.

Q Which son?

A Matthew. Matthew collects from him.

A Okay. Mrs. Bradshaw, where--would you look at that (indicating) diagram again? You'll see that there's a notation that says, "six foot fence".

A Okay.

Q There's a--is there a fence approximately six foot high, a wooden fence that runs along the back.....

A Yes.

Qline of your yard?

A Uh-huh.

Q Where does the Defendant live?

A The lives right on the other side of
the fence right here (indicating).

Q Thank you.

MISS SCANLAN: I have no further
questions.

THE COURT: Cross-examine?

CROSS EXAMINATION

BY MR. BEER:

Q Mrs. Bradshaw, as I understand it when
you walked out of the house that evening you
were upset and you suspected that it was Mr.
Sindak by the trailer, but you were not sure?

A Not until I saw him.

Q ...And you said nothing to Mr. Sindak
when....

A No.

Q ...Mr. Sindak said, "Good evening" to
you?

A Huh-uh.

Q You indicated that you had attempted to listen to what was being said at the trailer from outside of your--or while you were in your bedroom?

A Uh-huh.

Q And I believe you also indicated that you could not see who was outside, is that right?

A Uh-huh.

Q ...Wasn't there--or do you have a camper shell?

A No, some friends of ours do.

Q And on the night in question wasn't the camper shell at your house?

A Yes it was.

Q And isn't it true that the camper shell was located to the west of where the trailer is marked?

A No, it was not.

Q Can you tell me the location of the various things you had back there?

A This (indicating) is the trailer where I came out and they were staying....

Q Yes.

Athis (indicating) is the camper shell and this (indicating) is a small utility trailer that we have.

Q I see. When you were in the bedroom and you were attempting to listen to what was being said did you or your husband have any conversation regarding who it was?

A Oh, we could have. I--I don't remember exactly what was said that night. I--you know, what we have have said.

MR. BEER: No further questions, thank you.

THE COURT: Redirect?

MISS SCANLAN: Just a few questions.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Mrs. Bradshaw, how far is your bedroom window from the trailer where the children were sleeping?

A Between ten and fifteen feet I'd say--closer to ten feet, maybe twelve feet.

Q Thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Recross?

MR. BEER: No further questions.

THE COURT: Thank you, you may step down.

Next witness?

MISS SCANLAN: The State would call Jeremiah Bradshaw.

THE COURT: Do you want me to administer the oath?

MISS SCANLAN: No, but thank you.

THE COURT: Would you have--do you want the oath administered directly?

MISS SCANLAN: I think so.

THE COURT: Go ahead.

MADAM CLERK: Would you raise up your right hand?

(JEREMIAH BRADSHAW, was sworn)

MADAM CLERK: Sit down in that chair right over there (indicating).

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Will you tell me your name and spell
your last name for us?

A My first name is Jeremiah, and my last
name is Bradshaw, and it's capital
B-R-A-D-S-H-A-W.

Q Jeremiah, how old are you?

A Ten years old.

Q When's your birthday?

A March 2nd.

Q So you just turned ten?

A Yeah.

Q Where do you live?

A 3460 Jullion Street.

Q Do you have any brothers and sisters?

A Yes.

Q What are their names?

A Well, my sister's name is Roxie
(phonetic) and my bi--my big brother's name is
Matt (phonetic) and my twin brother's name is
Dan.

Q Where do you go to school?

A Summerwind Elementary School.

Q And that pretty close to where you
live?

A Yeah.

Q Just down Jullion?

A Uh-huh.

Q What grade are you in?

A Fourth grade.

Q Jeremiah, do you know what it means to
tell the truth?

A Yes.

Q What does it mean?

A It means to tell everything that went
on and don't tell lies and stuff.

Q Do you know what a lie is?

A Yes.

Q What's that?

A It's something that's not true.

Q Okay. Can you promise us that you're
going to tell the truth here today?

A Yes.

Q Do you remember last summer, August
18th, one night when Craig Hines (phonetic)

spent the night at your house?

A Yes.

Q Okay. Can you tell the Jury what

happened that night?

A Yea. Well, me and my friend, Craig Hines (phonetic) were out in the camper and we were going to go to sleep and we were trying to stay up all night and somebody came and knocked on the window and we opened up the window and we said, "Hey, knock it off.", because we thought it was some teenager or something. And so--so--somebody was saying, "Matt (phonetic)", that's my big brother's name and--and so we said, "Matt's (phonetic) not in here", and he mentioned mat--Matt's (phonetic) name about three times and so--well, he came over and he started talking to us and he asked us who was in there and I said it was Jeremiah and Craig Hines (phonetic)--Jeremiah Bradshaw and Craig Hines (phonetic). And so he came to the window and he asked if we wanted to go over to his house and watch television and he said, "Be quiet, so your parents don't hear." And

we--and we said, no, that we couldn't go over and watch television because we didn't have our clothes on and he said, "Well, you can get them on", and we said, "We don't have them with us." So after that he asked us if we would go for a walk with him and we said, no, we couldn't do that and he said, "Well, be quiet so your parents don't hear." And he mentioned that about twice--two or three times, and he asked us if he could come--come in there and we said, "No", and he just started walking on in anyhow and we heard a knock at the door and it was my mom and she told us to let her in and so we let her in and she said, "Well, do you want to come inside the house and sleep for the right of the night?", and we did.

Q Do you know who the person was that was outside talking to you?

A It looked--it looked similar to Ed--it looked like Ed.

Q Do you know Ed?

A Yeah.

Q Okay. And Ed is the gentlemen to my left?

A Yes.

Q Does he live near you?

A Yeah, he lives right behind us.

Q Okay. Had you met him before?

A Yeah, I'd met him before.

Q Okay. Why do you think that it's Ed that was....

A Because I--I could see the--he was wearing glasses and I could tell by his voice.

Q Uh-huh. Did you ever open the door or look out a window?

A Yeah, I looked out the window, but I never opened the door ~~until~~ my mom got there.

Q ...How old are you, Jeremiah?

A Ten.

Q Sometime later did you talk to a Police Officer, Detective Potter?

A Yeah.

Q How did that happen?

A Well, my dad he told the Police about it and he made this little--I can't remember

what it's called, but he just went to talk to Mr. Potter one day and we talked to him and he asked us what had happened and he wrote it down, and me and Craig were there, and it wasn't when Craig moved yet.

Q Did Detective Potter talk to you and Craig at the same time?

A Well, he put us both in a room, but he asked us each questions, but we both didn't answer at the same time.

Q So, he talked to you separately, is that right?

A Yeah.

Q Did this scare you, what happened on this night?

A Yes.

Q Do you think you remember it pretty well?

A Oh, there are lots of things that I forgot but I think that I remembered it pre--really well for eight months.

Q Okay. We've talked about it; you and I, isn't that right?

A Yeah.

Q And we've talked about it with your parents?

A Yeah.

Q Have you told the Jury the truth today?

A Yeah.

Q Okay thank you.

MISS SCANLAN: I have no further questions.

THE COURT: Mr. Beer, would you like to ask Jeremiah some questions?

MR. BEER: Yes, if I may.

CROSS EXAMINATION

BY MR. BEER:

Q Jeremiah, my name is Steve Beer and I represent Mr. Sindak. Jeremiah, can I come up with you for a second and just look at the board and I want to ask you some questions? Would that be okay?

A Yeah.

MR. BEER: Is that okay, Judge?

THE COURT: Yes, go ahead.

Q This (indicating) is a--it purports to be a picture of your house right here (indicating) and do you recognize your house and this would be Jullion Street, you know, that (indicating) one?

A Yeah.

Q And Telfair?

A Yeah.

Q And then I think Mr. Sindak lives back here, right?

A (Inaudible response).

Q Okay. Just so I'm on board, you indicated that Mr. Sindak came up to the trailer and talked to you through a window, is that right?

A At the beginning he didn't, but....

Q Okay.

Ahe came around to a window.

Q Okay. Could you tell where Mr. Sindak was when he first talked to you?

A He was by this (indicating) little--big win--well, not a big window but like a screen

that's opened up and then there's was a window behind it....

Q Okay. Can....

A at the front of the trailer.

Q Okay. So, he would have been here (indicating) first?

A Yeah.

Q Where is the door to the trailer?

A At the--this (indicating) side.

Q Okay. Would--is the door then--I get confused right or left, because it depends on which way we're facing. Would the door be closest to here (indicating) or would it be on this (indicating) side?

A On this (indicating) side.

Q Okay. So, you're claiming that it would be on the west side where my pencil is?

A Yeah.

Q Okay. And when you first talked to Mr. Sindak it was at this (indicating) window?

a Yeah.

Q And when did he next turn up? When did you next talk to Mr. Sindak? Where did Mr.

Sindak go from there?

A After that he came to the window on the side of the house, it was from the other side of where the door was.

Q All right. Would it be then the side of the, that trailer that would be on the east side?

A Yeah.

Q This (indicating) way?

A (Inaudible response).

Q Okay. And was there a window on that side?

A Yeah.

Q But no door?

A No.

Q Okay. And Mr. Sindak then talked to you at that point through the window?

A Uh-huh.

Q And then where did Mr. Sindak go after that?

A Well, I just can't remember. He just stayed there and talked to us for awhile.

Q Now, did Mr. Sindak, when he was up here by this (indicating) window that would be on the south side of the trailer, did Mr. Sindak ever ask you what you guys were doing?

A I don't remember him asking us that.

Q Do you remember the first words that Mr. Sindak would have said to you?

A Yeah.

Q What were they?

A He said, "Matt (phonetic)", about three, four times and he asked us if Matt (phonetic) was in there, and we said, no, he wasn't.

Q Did Mr. Sindak ever tell you that to tell Matt (phonetic) that he had his lawn mowing money?

A No, he just called at about 10:30.

Q So, there was never any conversation about coming over to his house to get the lawn mowing money?

A No.

Q Did Mr. Sindak ever come to the door of the trailer?

A He was starting to but he met my mom and so my mom came to the door instead of him and he just started to walk down the sidewalk.

Q Did you ever go over the next day with Matt (phonetic) to help him get the lawn mowing money?

A The next day I don't remember what happened but I did before.

Q Did you talk with your parents about what had happened and what was said the minute you got into the house when your mom took you back into the house?

A What do you mean?

Q Well, did you tell them that Mr. Sindak had come up to the trailer and asked you to go over to his house to watch TV?

A Yeah.

Q Okay. So you told them just that very evening?

A Yeah.

Q Do you remember what you and Craig were talking about just before Mr. Sindak yelled, "Matt" (phonetic)?

A No, I don't remember.

Q Do you recall anything that the two of

you guys talked about; you and Craig?

A Well, we didn't really talk about anything. We weren't in a conversation we were just telling a few jokes.

Q So you'd been telling some jokes?

A Yeah.

Q Do you remember the jokes you told?

A No, not really.

Q Were you two going to stay up all night?

A We were going to try.

Q And it was about, what 11:00, 12:00 that night that Mr. Sindak came up?

A Uh-huh.

Q Okay. You talked to both your mother and father after you got back in from the trailer that evening and then did you talked (sic) about it again the next day?

A Well, I think I talked to Mr. Murray about it, and he's a Policeman that lives

behinds us and me and him and my dad got into a little conversation.

A And so you told them what had happened again and before you came here today did you have an opportunity to talk with Ms. Scanlan or the Prosecuting Attorney?

A Yes.

Q And then were your parents there at the time?

A Yeah.

QDid you ever tell Officer Potter that the first time you noticed anything was when Mr. Sindak knocked on the door?

A yeah.

Q Now, you indicated that he was attempting to come to the door but that he hadn't reached it today at least....

A Yeah, I told her.

Q Okay. At least when you talked to Officer Potter after this happened you said that he knocked on the door, is that right?

A No, Ed didn't, but my mother did come in.

Q When you heard the knocking on the door, whether it was from your mother or from Mr. Sindak, do you recall what you said?

A Well, my mom said, "Craig and Dad--Jeremiah, let me in because I'm going to take you in the house."

Q Do you ever recall yelling, "Knock it off"?

A Yeah.

Q Is that when you said, "Knock it off", when you mom was knocking on the door?

A No, I heard it when somebody had knocked on the door and I thought it was teenagers in the beginning.

Q Okay.Has Mr. Sindak ever gotten after you and your brothers for climbing the fence to get to the cherry tree?

A Yeah.

MR. BEER: I have no further questions.
Thank you, Jeremiah.

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Jeremiah, how many times on that night did somebody knock on the door of the trailer?

A Twice.

Q Okay. Tell me when that took place?

Q At the beginning somebody knocked on the door and I didn't know who it was, I guess it was Ed, and at the end my mother knocked on the door to ask us to come in the house.

Q Okay. At the beginning when someone knocked on the door and you think it was probably Ed, was that person saying anything?

A She was saying, "Matt" (phonetic) -- he was saying, "Matt" (phonetic).

Q Okay. So that was when somebody was calling Matt's (phonetic) name, is that right?

A (Inaudible response).

Q ...Jeremiah, has anybody told you what to say here today?

A No, but my mother and father they went over it with me and asked me what happened a few times.

Q Okay. Did anybody tell you that you should say certain things?

A No.

Q Did people tell you that you should just say--tell the truth?

A Yeah.

Q And did I tell you that if you didn't know the answer to a question that you should say you didn't know?

A Yeah.

Q All right. (Indiscernible) that you say you don't remember

A Yeah.

Qand just to tell the truth....

A Uh-huh.

Qas best you remember?

A Uh-huh.

Q Is that what you did today?

A Yeah.

Q Thanks.

MISS SCANLAN: No other questions.

RE-CROSS EXAMINATION

BY MR. BEER:

Q At the time that this occurred that evening can you tell me how long before you first saw Mr. Sindak, how long it was be--from the time you first saw Mr. Sindak to the time that he left and your mom knocked on the door?

A It was about ten to fifteen minutes.

Q So we have--Mr. Sindak you first see him through the window at the front of the trailer and then....

A I didn't see him through the window the seal was down; the part that opens.

MR. BEER: Your Honor, may I approach the

.....

THE COURT: Yes.

MR. BEER:chart again?

Q I thought that you said that you had seen him through the window that would be to the south side of the trailer?

A I didn't see him through the window I just know that he was there, because I could hear the voice coming from there.

Q And the first time you saw him was on this (indicating) side of the trailer through the window?

A No, that was the second time.

Q Okay. And can you tell me the first time again as to where he was?

A It was on the south side of the trailer up at the big window.

Q Okay. But, did you just say that you couldn't see him through this window?

A Well, I didn't see him because there was a little plastic thing that goes over the window that you have to lift up in order to see through the window; it was down.

Q All right.

A I just heard his voice coming from there.

Q Okay. So when he was right here (indicating) you could just hear his voice?

A Yeah.

Q And then the first time you saw him it would have been on this (indicating) side of the trailer at the window?

A Yeah.

Q And do you recall a knock on this (indicating) door on this (indicating) side before you heard Mr. Sindak at this (indicating) window?

A Yes.

Q And from the time that you heard the knock on this (indicating) door to the time that you heard Mr. Sindak at this (indicating) window how many minutes had elapsed?

A Well, about one--one minute.

Q Okay. So he had about one minute from here (indicating) to here (Indicating) and then when you heard Mr. Sindak, was this where he was saying, "Matt (phonetic), Matt (phonetic)"?

A Yeah.

Q Okay. And then from the time that you heard that but you couldn't see Mr. Sindak to the time that you saw him through this (indicating) window how many minutes had elapsed?

A Well, it wasn't really minutes, it was about thirty to forty seconds.

Q And then, at this point was this when Mr. Sindak just walked out and said, "Do you want to watch television at my house"?

A Yeah.

Q And then I guess he asked you to, who was in the trailer?

A Yeah.

Q Did he ever ask you about Daniel?

A Yeah, he asked me where he was and I said he was inside the house because he was sick.

Q And how long do you think this conversation took when Mr. Sindak was just talking to you through the window?

A About eight--seven or eight minutes.

Q And you've told us everything that was said during that time period as far as what you recall?

A Yeah.

Q Okay. So we have about seven or eight minutes and then how long was it after that conversation lasted; seven or eight minutes, to

the time that you heard your mom knock on the door?

A About two--two or three minutes.

Q Did you know during that time period where Mr. Sindak was?

A Huh-uh.

MR. BEER: No Further questions, thank you, Jeremiah.

THE COURT: Redirect?

MISS SCANLAN: No, Your Honor, thank you.

THE COURT: Thank you, Jeremiah, you can go back out now.

WITNESS BRADSHAW: Okay.

THE COURT: Okay.

MISS SCANLAN: The State would call Keith Potter.

(KEITH POTTER, was sworn)

DIRECT EXAMINATION

BY MISS SCANLAN:

Q Will you state your name and spell your last name for the record, please?

A Keith D. Potter, P-O-T-T-E-R.

Q Are you employed, Mr. Potter?

A Yes I am.

Q What do you do?

A I am a School Resource Officer for the
Boise Police Department.

Q Do you work in a particular school?

A I have fifteen grade schools below the
bench area.

Q How were you employed on August 20,
1985?

A Since school was out we were working
just as a--basically as a Juvenile Detective,
taking all--all the juvenile cases.

Q All right. Do you recall meeting
Jeremiah Bradshaw and Craig Hines (phonetic) on
August 20th of 1985?

A Somewhat, yes.

Q And where did that meeting take place?

A I believe it took place at the Police
Station. The parents brought the boys there.

Q Okay. Did you interview the boys
separately?

A Yes, I did.

Q Did you ask them about--did they explain to you about an incident that had occurred at their home--at the home of the Bradshaw's (sic)?

A Yes.

Q Did the two boys tell you essentially the same story?

A Yes they did.

Q You wrote a police report then that was forwarded to our office, the City Attorney's Office?

A That's correct.

Q And have you had any other real involvement in this case beyond your interviews with the victims?

A No, that's basically the major involvement.

Q Thank you.

MISS SCANLAN: I have no other questions.

THE COURT: Cross examine.

MR. BEER: Yes.

CROSS EXAMINATION

BY MR. BEER:

Q Officer Potter, did Jeremiah and Craig tell you that they had first heard a knock on the trailer door?

A I have my report here, may I refer to it?

Q Certainly.

A ...As I read the report apparently there was a knock on the trailer door, yes.

Q In the--well, did the boys tell you that they had ever been asked to come over to get paid for their lawn mowing jobs?

- A ...I don't recall. I know that according to my report I talked to the father about that type of subject but I can't recall that the boys ever said whether he invited them over to get paid or not.

Q In the Complaint that was filed in this case there was an allegation that Mr. Sindak--Sindak had asked the children to come over to his house to watch television and get paid for some yard work without the parent's

permission, do you know where that particular wording in the Complaint came from?

A ...According to my report the Defendant had called earlier to the father requesting that the boys come over and be paid for their yard job, and then as I read this he asked the boys to come over and watch television with him when he was over next to the trailer.

Q Your report indicates that it was taken approximately at 10:00 on August 20th?

A Yes.

MR. BEER: No further questions, thank you, Officer.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MISS SCANLAN:

Q Officer Potter, you did not initiate an action against the Defendant yourself, did you?

A No I did not.

Q That was sent through the City Attorney's Office, is that right?

A That's correct.

Q The Complaint was drafted in our office?

A Yes.

MISS SCANLAN: I have no other questions.

THE COURT: Recross?

MR. BEER: Nothing further.

THE COURT: Thank you, Officer, you may step down. Next witness?

MISS SCANLAN: The State would rest at this point, Your Honor.

THE COURT: All right. Members of the Jury, I'd like to take a recess of about ten to fifteen minutes and then we'll return for the Defendant's opening statement and their evidence. Thank you. I'd like you to retire to the Jury Room, but before you do that I would ask Mr. Beer if you would assist the Prosecutor to move our roadblock there. Thank you. Court is in recess.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Thank you. Please be seated.

And does the State wish to raise something with me before we take the recess.

MISS SCANLAN: I just would request that my witnesses be excused.

MR. BEER: I have no problem if you do that.

MISS SCANLAN: Fine.

THE COURT: All right. You're welcome to release your witnesses then. Anything else before we recess?

MR. BEER: Your Honor, I have prepared a Motion to Dismiss, which I will give to the Court and it covers the areas that I think we've already talked bout. May I approach the Bench?

THE COURT: Yes.

MR. BEER: I've already provided this to Miss Scanlan.

THE COURT: I'd like to just take a pause on the record.

(Court off record)

(Court on record) -

THE COURT: I have read your Motion to Dismiss, Mr. Beer, does the State wish to respond to it?

MISS SCANLAN: Your Honor, I would--the only (indiscernible) meaning of the word "home" encompasses a place where one resides. I believe that's anywhere within the curtilage and I think that this clearly is a place within a curtilage of the property and it's a place where these people reside, and I think it certainly falls within the meaning of "home". A home is different than the word "house", and the statute particularly sends home that (indiscernible). In terms of whether or not the statute requires some particular intent, I think that this is a statute of general intent. There is no specific intent and I don't think there's any reason that there needs to be a specific intent.

THE COURT: Mr. Beer, do you wish to speak further to your motion beyond that which you're (sic) already argued here in the motion or earlier on your pre-trial motion?

MR. BEER: Only one additional point. I
don't think there's been any proof that the
crime, if committed, was committed in Ada
County.

THE COURT: All right.

MR. BEER: I don't recall that testimony,
Your Honor, but if the Court does, I

THE COURT: Okay. Well, the Plaintiff's
first witness, Mr. Bradshaw, indicated that he
described his--he first said he lived in Boise
City and then gave the address, I believe
that's sufficient. Well, the Motion to Dismiss
is denied and the Clerk is directed to file
your Motion to Dismiss in the case to make it a
matter of record. All right. Anything else
before I take a recess?

MR. BEER: No, Judge.

MISS SCANLAN: No.

THE COURT: Okay. Thank you.

(Court off record)

(Court on record)

THE COURT: Continuing with State vs.
Sindak; the Jury remains in the Jury Room, the

parties are back before the Court as before.

Does the State have anything to raise with me
before the Jury is recalled.

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: No, Your Honor.

THE COURT: I have nothing so I would ask
that the Clerk return the Jury and we'll take
up your witness, of course, preceded by your
opening statement.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Thank you, please be seated.
The Jury is back, the parties continue to be
present. Members of the Jury, we will now
begin the Defense, and before Mr. Beer calls
and witnesses he would like now to make his
opening statement to you. Mr. Beer?

MR. BEER: Ladies and gentlemen of the
Jury, Judge Schmidt, Counsel; when I talked to
you earlier this morning, when we were
selecting a Jury I asked that you keep an open

mind because what we have heard so far is the State's case and it is at this time that we are here to hear what the Defendant has to say. The Defendant has pled not guilty to this charge and that's a legal way of saying, "I didn't do it", and I think that that is very important and the reason that we are here for a trial today is because the Defendant said, "I didn't do it", and if we had every case in Ada County....

(Court off record to change tape)

(Court on record)

MR. BEER:tried actually tried we'd probably close down the Courts in a matter of days. So it's very important that you remember that the Defendant has said, "Not guilt(sic), I didn't do it." The purpose of the opening statement is to give you a birds' eye view of where we are going with the evidence. The Defendant in this case does not need to take the stand. He has said really all that he needs to say and that is, "I didn't do it", so we could stop at this point. We're not going

to do it because I think that you could have some questions as to why the Defendant didn't take the stand so the Defendant is going to take the stand and there are a few things that we don't need to worry about and you don't need to resolve, because during the night in question, first of all, he did call Mr. Bradshaw and he asked if Matt (phonetic) was around and the purpose of that call was to pay Matt (phonetic) for the law mowing that he had done. So, we don't disagree with Mr. Bradshaw's testimony as to that. We disagree with perhaps the length of the conversation and what was said during the conversation but basically we don't have any qualm with that. I also don't have any qualm that Mr. Sindak talked to Jeremiah and to Craig Hines (phonetic) that evening, and we don't have a qualm that it was about 11:00 or 12:00. Mr. Sindak's going to tell you that that night he had been doing some yard work and the he made the call to Mr. Bradshaw and then he went out and cleaned up and that decided he'd take a

little walk. And so he walked and he walked by the trailer and he heard some noise, and he couldn't figure out what it was and so he went up to the trailer, and he said to Matt--or, "Is that you?", and that is when Jeremiah came to the window and said, "No", and he said, "Matt's (phonetic) in the house", and Jeremiah said that he was there and that Craig was there; the other little boy. The conversation did not go as Jeremiah says. Mr. Sindak's going to tell you that, yes, he talked to them, he said, you know, "What are doing (sic)?" They said that they were sleeping out. He said that that was, you know, good. He never asked them over to watch television. He did say, "Would you please remind Matt (phonetic) that I've got his money for lawn mowing," and that was it. The conversation took about two or three minutes, and at no time was Mr. Sindak ever on the side of the trailer with the door. The only conversations that he had were when he was walking on the sidewalk and through the south side, I believe, of the trailer. He said,

"Matt (phonetic), is that you?", and then he went around to the side of the trailer, but it was the side opposite the door. The testimony in this case is going to boil down to credibility, and that is the credibility of Mr. Sindak and the credibility of Jeremiah. And, we're not inferring by that statement that anybody is lying, but simply, everyone is trying to recall exactly what happened, but the testimony that you're going to hear today is vastly different than what you have been introduced to by the State. Thank you very much, Ladies and Gentlemen.

THE COURT: Go right ahead.

MR. BEER: I call Mr. Sindak, if I may.

(EDWARD P. SINDAK, was sworn)

DIRECT EXAMINATION

BY MR. BEER:

Q Mr. Sindak, would you state your name please?

A Edward Sindak.

Q And what is your address?

A 3459 Payne Place.

Q Mr. Sindak, in view of the time and we
need to hurry though this I'm going to go
directly to August 18, 1985. You previously
have heard the testimony of Mr. and Mrs.
Bradshaw and also Jeremiah, did you call Mr.
Bradshaw that evening?

A Yes I did.

Q And Mr. Bradshaw said it was about
10:30, is that approximately correct?

A That's correct, yes.

Q Can you tell me what you talked about
with Mr. Bradshaw?

A I was more interested in getting Matt
(phonetic) his money for doing the yard work
and basically we visit once in awhile over the
phone regarding his health and the kids and so
forth.

Q Mr. Bradshaw indicated that that
conversation took approximately five to ten
minutes, do you recall talking that length of
time?

A Usually I don't talk that long on the telephone so I'd--you know, I'd say not that long.

Q Do you have an approximation of how long you talked to him?

A Oh, more like three minutes perhaps.

Q Did you have a conversation with the--Jeremiah later that evening?

A Yes.

Q What--well, first of all, tell me where the conversation took place?

A Well, it was there at the trailer. I didn't know which boy it was. I can't tell the twins apart anyway, but it was dark, I couldn't see who was in the trailer, but, yes we did have a.....

Q What were you.....

Aconversation?

Qdoing when you went to the trailer?

A I was out for my evening walk; actually just going down the sidewalk and I heard this runkus (sic) coming from the trailer area so I

just stopped for a minute and then I called out for Matt (phonetic) figuring they were just horsing around there in the trailer, or whatever was going on, I didn't know. I called out again, nobody answered, so I walked down between the trailer and I believe the chart had the trailer moved toward the center of the slab; the camper shell itself was on this (indicating) side of the trailer as I recall it.

Q If I can have you show the Jury; but first of all, where you were walking, in which direction?

A There is a corner here (indicating) and I live in the house on the corner and there is a street here (indicating), which is Payne Place. I normally just come out the front door and walk down the sidewalk. The picture doesn't indicate any sidewalk here (indicating) to here (indicating), however there is a walkway or a sidewalk, and I was walking down here (indicating) when I heard the noise and I stopped here (indicating) and went down between

the trailer and the utility trailer and I could hear the kids talking then; that's when somebody said, "Knock it off", and then I stopped and listened at the window and I inquired who was in there and what they were doing and at that time we just visited momentarily and I just reminded whoever it was in the trailer that I got Matt's (phonetic) money over at the house and he can come and get it anytime and I proceeded on out back to the sidewalk, around the tongue of the trailer, which sticks up in the roadway, more or less, and that's when I walked out in front and confronted Mrs. Bradshaw who was standing right here (indicating) on the lawn. I said, "Good evening" and continued on my merry way for my evening walk. It was fairly hot that evening and

Q At anytime during the conversation you had with Jeremiah and Craig; the people in the trailer--the children in the trailer, did you ever ask them to come over to your house to watch television?

A No, I did not.

Q Did you ever ask them to come over to
your house at all?

A Not that night, no.

Q Did you ever ask them if you could come
into the trailer?

A No I did not.

Q Did you ever ask them to leave the
trailer to go someplace other than your house?

A No, I had no reason to.

Q Okay. Did Matt (phonetic) come over
the next day to collect the money?

A Yes he did.

MR. BEER: No further questions, thank
you.

THE COURT: Cross examine?

MISS SCANLAN: I have no questions, Your
Honor, thank you.

THE COURT: You may step down, Mr. Sindak,
thank you.

WITNESS SINDAK: Thank you, Your Honor.

MR. BEER: The Defense rests.

THE COURT: Does the State wish to offer any rebuttal evidence?

MISS SCANLAN: No, Your Honor.

THE COURT: Members of the Jury, both sides have rested. I have one final set of instructions to give to you. It is at this point of the trial, now that I've heard all of the evidence, that I know what to put in this set of instructions. It will take me a few minutes to get them organized and I am required to submit them to the Attorneys to give them an opportunity to respond to them before I present them to you. If you'd please retire to the Jury Room once again I will assemble these instructions now, review them and present them to you as directly as possible. And again, Mr. Beer, if you could assist with our chart there I would--we can make the Jury Room available now. Thank you and I'll have you back as soon as we have arranged those instructions.

MADAM CLERK: All rise.

(Court off record)

(Court on record)

THE COURT: Continuing with State vs.

Sindak. The Jury remains outside of the courtroom and the parties have been given the Court's Proposed Final Instructions, which numerically begin with No. 9. Has the State read the Proposed Final Instructions?

MISS SCANLAN: Yes, I have, Your Honor.

THE COURT: Do you have any objections to any of them?

MISS SCANLAN: No I don't.

THE COURT: Mr. Beer, has the Defense read the Proposed Final Instructions?

MR. BEER: Yes, Your Honor, we have.

THE COURT: Do you have any objections to any of them?

MR. BEER: We do have an objection as to Instruction No. 9, I don't think that's a correct statement of the law. The statute in question refers to the term "home" and yet this instruction seems to be dealing with buildings and other shelters, whether permanent or mobile. And then it says, "Not connected to the dwelling but located close to it." I think

that any definition that I've seen it would still have to be on the same property. In other words, you can't burglarize a shed that is on somebody else's property, and you claim that that's close enough to it, so I.....

THE COURT: Do you think within the framework of the evidence presented in this case and taken only in light of this case though that this is exactly what we're talking about? There's no dispute in this case about where the trailer was in terms of whose property it was.

MR. BEER: Well, there is sort of a dispute because the tongue of it was out on the public right-of-way. The public right-of-way goes in for twenty feet, so--however, that's not particularly in point. It's just that I don't think that instruction should be given.

THE COURT: State wish to respond on Instruction 9?

MISS SCANLAN: No, Your Honor.

THE COURT: Well, let's see. ...Perhaps this, "It is the law in the State of Idaho that buildings and other shelters, whether permanent

or mobile, not connected to a dwelling but upon the same property and located close to it and used in conjunction with it take on the attributes of the dwelling and are considered a part of it." I think that answers the property line issue. And I believe you had some other objections about the instruction not really referring to the language of the statute, that is the word "home"?

MR. BEER: That is correct.

THE COURT: I believe that I view the word "home" and "dwelling" as synonymous in this instruction.

MR. BEER: That--I would disagree with that, but I don't think that I'm probably going to succeed in getting you to change your mind so I'd just enter an objection to the entire instruction.

THE COURT: . . . Okay. As modified then with the property line correction that the instruction will remain. Any other objections to any other instructions?

MR. BEER: . . . No, I'm sorry.

THE COURT: On Instruction 10, do we need this instruction?

MISS SCANLAN: I didn't know what exactly it was referring to.

THE COURT: This refers to the business of circumstantial evidence.

MR. BEER: Judge, I don't think its applicable.

THE COURT: This is the instruction that begins, "Where the witnesses on the Defendant on..."--oh, I'm sorry, I don't mean 10. 10, yeah, this is a--this is where--I give this were a Defendant testifies about making an admission against his interest. It's a technical thing, particularly, in this case. I think you'll all agree that Mr. Sindak took the witness stand and he admitted that he was at the trailer. He admitted engaging in conversation. And these are all technically facts against his interest because he admitted to being there and that's part of the State's burden of proof, to show that he was there doing these things, and engaging in the

conversation. And although there's a dispute about the contents of the conversation by Mr. Sindak's own admission, he puts himself right at the trailer and there are parts of his testimony that are exactly consistent with those of the parents and the child. And so, in a way, those are statements against his interest to that extent, and so I felt it was necessary for me to give that. I don't know if this is just one of those instructions that instructs the Jury too much or not. Maybe it's really not needed. Does the State think that No. 10 is needed?

MISS SCANLAN: No, Your Honor.

THE COURT: Do you, Mr. Beer?

MR. BEER: No.

THE COURT: I'd just as soon not have it, but I offer it. All right. And then the next one, which would be 11, if they were numbered, but it's the third one in the pile, "Where the case of the State rests substantially or entirely on circumstantial evidence and thereafter", what do you think of that

instruction? Does the State feel I should give this instruction or do you have any feelings about it at all?

MISS SCANLAN: I don't think that it's necessary.

THE COURT: Mr. Beer, what do you think?

MR. BEER: Judge, I would like to have 11.

THE COURT: Okay. It will remain. I believe this is the instruction that is of such hot debate amongst some of the Judges. Okay. And I believe you said that--so that actually becomes 10. Okay. There's a total of 14 instructions. Now, as to the one instruction that I--I withdrew here with your acquiescence, I'm going to put on the bottom of this, "Offered by Court" so in case there's an appeal the Appellate Court could at least know what we're talking about. And that will remain part of the record. All right. Does the State have anything to take up with me outside the presence of the Jury before we proceed with the Final Instructions?

MISS SCANLAN: No, Your Honor.

THE COURT: Does the Defense?

MR. BEER: Judge, how long do you wish
Counsel to argue?

THE COURT: A total of fifteen minutes
each side, meaning if the State wishes to speak
twice the total of the two must be within
fifteen minutes.

MR. BEER: Will you signal at such and
such a time?

THE COURT: Only if you request it.
Generally, I let the clock go and I'll warn you
at one minute.

MR. BEER: That's fine.

THE COURT: Anything else. Okay. Nothing
further appearing then, I--do you need to speak
with the Prosecutor, ma'am, before I recall the
Jury?

UNIDENTIFIED VOICE: No, I'm here to hear
the argument (indiscernible)....

THE COURT: Okay. The Clerk will recall
the Jury then please.

(Pause)

THE COURT: Thank you, please be seated.

The Jury has returned, is present and accounted for; the parties continue to be present.
Members of the Jury, I give to you now your Final Instructions. They begin with No. 9 and go through 14.

(Final Instructions recorded, but not transcribed)

(Closing Statements recorded, but not transcribed)

(Other portions recorded, but not transcribed).

THE COURT: Does the Defense?

CERTIFICATE OF PARTIAL TRANSCRIPT

The undersigned does hereby certify that

' she correctly and accurately transcribed and
' typed the above partial transcript from the
recording of STATE OF IDAHO vs. EDWARD P.
SINDAK, JURY TRIAL, which was recorded APRIL
24, 1986, in the above entitled action.

Dated and certified this 26th day of
August, 1986.

/s/ Gail Lee Christensen